

V.

A Brief
ENQUIRY
INTO
LEAGUES
AND
CONFEDERACIES
Made betwixt
PRINCES & NATIONS,
With the Nature of their
OBLIGATION.

Composed in the Year 1673. when *England* and *France*
were Confederates in a Common War against *Hol-*
land. And *England* made a separate Peace with
Holland, leaving *France* Engaged in the War.

By Sr. P. M.

L O N D O N,

Printed for J. Tonson at the Judges Head in
Chancery-Lane. 1682.



A BIBLE
FIN O L I R Y
INTO
L E A C U E S
A NEW
CONFESSIONAL

BOOKS

OF THE

NEW TESTAMENT
AND
THE
OLD TESTAMENT

AND
THE
NEW TESTAMENT

AND
THE
NEW TESTAMENT

A brief Enquiry into Leagues and Confederacies made betwixt Princes and Nations, with the Nature of their Obligation.

THat which gives the formal obligation to all Contracts both public and private, those betwixt Princes and Governments, and those betwixt particular Persons, is the will or assent of the Persons contracting. And what the mind or meaning and intention of those Persons was at the time of their contracting, that, and no more, is the Subject matter contained in the contract. I add those words *no more*, because in matters of Pact and Promise, as no Man is obliged to what he never assented, so no Man can assent to what he never intended.

But these Acts of the will and mind of Men are intrinsic, secret, and not known, till manifested and declared by some outward sign, such as words, which of all others are the most natural and proper signification of our inward sentiments. Now a Man having signified his

meaning by his words, and thereby also testified his assent thereto, the obligation of his Will becomes extended to comprehend, not his intrinsic meaning only, but his words also. And he is bound to the true and just performance of them, as they are the declarative testimony made by himself, of his invisible, and otherwise unknown intention.

And lest we should still be in the dark, concerning the meaning of the very words themselves, Reason dictates, that in matters of Contract they ought to be given, and taken also (without manifest cause to the contrary,) in their most plain and simple sense, according to their popular use, and received Propriety. For Contracts and Covenants transfer a Right from one Man to another, and if every Man were left at liberty in his own cause, and to his own advantage, either to Substitute or Suborn what tacit meaning he pleases, though never so repugnant to his words; or to affix what Sense he will upon his words, though never so disagreeing to his otherways signified intention; these, and either of these, if admitted, would subvert the faith of all Contracts. Things stipulated betwixt Man and Man would be under those uncertainties; no Mans Right could be known,

known, and Controversies would be endless Things destructive to humane Society, and which introduce Confusion into the Moral World.

But still tis true also, that a man is obliged to no more, than what his will and intention was to oblige himself unto; nor doe his words superinduce any new obligation upon him, but onely declare a former arising from his inward assent, and consequently extend that former Obligation to what is now declared. And have no power to alter his secret meaning but onely to testify it. And are not to be considered as disjoind from it, but conjoind with it. And if a man does not rightly expresse what he truly means, he is unhappy therein, and it may involv him in trouble and inconvenience. Yet if by the most probable conjectures it can be found, that his true meaning was different from what his words seemingly import, equity will relieve him, by preferring his meaning before his words. Nay if the meaning of men in their mutual Pacts and Stipulations could certainly be known without words, the superaddition of words would be wholly useles and superfluous.

Therefore in the Interpretation of all contracts, that which primarily and principally

*Quid? verbis
satis hoc con-
tineret? mi-
nimè. Quæ res
igitur valuit?
Voluntas. Quæ
si tacitis nobis
intelligi possit
verbis omnino
non uteremur,
quia non potest
verba reperta
sint, non quæ
impedirent
sed quæ indi-
carent vo-
luntatem. Cic.
Orat. pro A.
Cæc.*

to

to be regarded in case any doubt arises, is, what the mind or intention of the Contractors was. And this must be collected from all the probable signs and indications not only of words whither spoken or written, but of other rational Conjectures, fetch'd from their several Topics of Precedent Causes, concurring Circumstances, necessary Consequents or effects and the like. And where there is no Reason to the contrary, nothing of absurdity that would follow, or which admitted would render the Contract useless, we ought to stand to the Propriety of the words; yet still with this difference, that in *matters odious* they ought to be restrain'd to their narrowest signification, in *matters favourable* enlarged to their full latitude, in both according as the Nature of the thing, and the Equity of the case shall direct. But never to be extended to things unlawful, impossible, contrary and repugnant, absurd and irrational. What's unlawful a man ought not to will, and if he does, his Act morally considered is a nullity, and so not obligatory. What's impossible he cannot perform, and so in vain to will it. Contraries he cannot will at the same time because repugnant. And 'tis to be presum'd, that a man of Reason will not will what's irrational.

It

It was a manifest Caption and Cavil in the *Romans*, who being to divide the Ships betwixt them and *Antiochus* by equal shares, cut every Ship into two equal parts. For half the Ships, according to the usual Propriety of the words, is not the half of every Ship cut asunder, but half of their entire number, with respect first had to their goodness and dimensions.

Dimidia pars Navium.

After the second Punic War it was Covenant^{ed} by League, that the *Carthaginians* should not *have* or *wage* War with any without leave of the *Roman* People. The word *War* is generical and partible into the two Species of *invasiv* and *defensiv*. The Question is, whether in this case it shall be extended to both Species, or restrained only to *Invasiv*. Here tis to be considered that the subject matter of the Question is of a thing *odious* and *burdensome*, viz. the Diminution of Liberty, both Civil and Natural. For Nature allows every man a Right of defending himself, by repelling force with force, and if every man, then much more a Politick Society. The Equity of this case directs us to believe that the *Carthaginians* would not renounce so necessary a Right. The propriety of the word War is sav'd well enough by

It was not said, *Non iussur*, but *non generent bellum.*

by restraining it to the Principal Species of War, *viz.* Invasive, which carries with it a greater ostentation of power than a Defensive. Thus in a matter *Odious*, the Equity of the Case directing, and the Propriety of the Words having or *Waging* War allowing, they shall be construed, only to restrain the *Carthaginians* from any Hostile Aggression or Invasion of others, but not from the necessary Defence of themselves when attack'd by an Enemy.

But suppose the words of the said League had been to forbid the *Carthaginians* the furnishing or relieving any Enemy of the *Roman* People with Arms. Here the word *Arms* is likewise general, and may be divided into Offensive and Defensive. The Question is, whither in this case it shall be taken generally to comprehend all Arms, or restrictively to Arms offensive onely, which are the nobler sort of Arms, and sometimes the Nobler species is taken for the whole Genus, as in the former Case of *War*. If we proceed by the former method we shall find, that the matter of the Question is of a thing *Favourable* and *Beneficial*, *viz.* the hindring the Relief of an Enemy. That the intentional Equity of the Case is to debar an Enemy from all Instruments of Hostility,

Hostility, not only those whose proper use is to hurt as Swords, Bows, Javelins, &c. but those also whose proper use is to repel all Hostile hurt, such, as Shields, Helmets, Coats of Maile or what else were the use of that Age. But so as not to extend the words beyond the Subject matter of Arms, to Clothes, Victuals and the like, for such are not Arms, and though they repel Hurt as cold and Hunger, yet tis not Hostile hurt. And we find also that the propriety of the words best agrees here with their largest Acceptation. Tis clear therefore that in this Case *the relieving of an Enemy with Arms*, shall be understood Contrary to what, in the former, not restrictively to Arms offensive onely, but extensively so as to Comprehend all Arms whatsoever.

All Leagues and Confederacies properly so called, made and contracted betwixt Princes and Nations, are but the Deductions and Political Results, of natural justice and Wisdom as they are particularly applicable to the present Emergencies of State. Justice Examins their Principles, Wisdom their Ends. So, that if two or more Princes Confeder-

Liga à ligando.

ate together against a Third, whom they Declare their Common Enemy, And the War so declared be in its Nature Manifestly unjust, this is an ill grounded War through defect of the Principle, and is rather a Combination then a League, for every League both in name and nature implies a Tie or obligation, But *no Prince is tied to be unjust.* Suppose then the War to be as to its Principle, just, and so the League initially good, yet if by the necessary Concomitants and Consequents thereof it be found that in the Event it will certainly involve one of the Confederates in apparent ruin and destruction, This if continued is an ill advised War, and the obligation to it ceases through defect of the End. For *no Prince is bound to destroy himself.* And the proper and adequate end of all Leagues and Alliances betwixt Princes and Governments is the safety and benefit of each others Crown and People.

The French King declared England Principal in the War against Holland.

If there be Principal and Accessory in a War, and the Principal be satisfied as to the terms and conditions of Peace offered, the other Prince who is but the Accessory ought to acquiesce, But if both be Principals, the one

one is free to pursue his Right though the other desists.

A Prince cannot oblige himself to continue a War during the pleasure of his Confederate or which is all one, not to make a Peace without the others consent. When I say *he cannot*, I mean not any Civil Impotency or defect of power on the part of the Prince, but a moral impossibility or repugnancy on the part of the thing. And if a Treaty be couch'd in such like terms, they are either meerly insignificant, or must admit of some equitable construction to make them reducible to a practical sense. For otherwise according to the rigour of the Letter such Words would oblige a Prince to continue an unreasonable an untimely a calamitous War, onely to gratifie the Ambition, will, or humour of another. And this will be to tie a Prince to do what he is already tied not to do, which is a Moral Contradiction.

But put Case the Treaty obliges both Princes to continue the War by a Conjunction of forces till both may obtain reasonable

Conditions from their Common Enemy. In this Case each Prince shall have the Judgment not onely of his own but of the others conditions also, so far forth as they relate to the continuance or discontinuance of the War on his part; else upon pretext that his Conditions are not reasonable, the one may everlastingly Opiniastre the War and consequently engage the other in it during his single pleasure.

All Leagues and Contracts as well with Princes as with private Persons are ever mutual and reciprocal, and are always made betwixt two parties at fewest, and where there are but two in the contract, if one of them departs from it, tis no longer a contract. Now a Prince by the non performance of every material point contained in the League or Treaty violats the Faith thereof and departs from the League it self. And this non performance on the part of the one Prince does not operate by way of investing in the other a power or moral faculty of breaking or nonperforming with him in a matter of the like nature; for then it would tantamount to this, because one is false to
me.

me therefore I may be false to him. But it operates by way of annulling and avoiding the whole League, as having no longer any obligation in it. It becomes a meer cancell'd Bond, and is so far from being an agreement that in the issue and effects it proves a Disagreement,

No Prince is bound by any League to perish singly or in company with another, and the safety welfare and prosperity of his People are his Primary obligation. First in Time and first in Dignity, to which all Treaties and Transactions with forrain Princes are but secondary and subservient, neither can any of them be pleaded to evacuate that original and fundamental obligation. And though private Persons may in several Instances contract to their own great Hurt and Dammage, and still be bound up thereby, yet tis otherwise with Princes in their public and politic capacities because of the Conjugate Interest of Prince and People. Forasmuch as a Prince cannot greatly hurt himself without hurting them to the preservation of whom, and to the procuring of whose good and benefit, he is already pre-engaged.

ingaged In which sense tis infallibly true,
Actus Posterior non præjudicat priori.

Princes, in their making Leagues and confederacies each with other, take their measures from the Consideration of the present posture and condition of their Affairs in the whole complex of them both at home and abroad. If the same reasons and inducements remain, which first moved them to enter into the League, not to persist in it would be levity at least, and if conjoind with a design of deceiving and hurting another no less then perfidy. But if a new Scene of affairs opens quite different from the former, if unexpected Accidents fall out which Chang the reason of the Case, such, as if either of the Confederates could have had the foreknowledg of, He would never have entered into the League. here the cause of it ceases. The foundation fails. The Prince is to consult the present conjuncture, to take other measures suited and adapted to the now State of things. For to debar a Prince from accommodating his Councils to new and unforeseen Emergencies. is equally absurd, as to oblige a mariner not to shift his sails according to the variation
of

of the Winds. A Prince thinks it just and reasonable under his present circumstances to enter into a Society of Arms with another, and be Confederate with him in a common War. The Condition of his Affairs afterwards changes, and as then considered, renders the War unreasonable, His people fall into distempers at home; his Arms more requisite elsewhere. The continuation of the War followed with a train of fatal Consequences at first not so easily discoverable. In this Case the Prince needs none to dispense or absolv him, if any other could do it besides the Person contracted with, from the Tie and Bond of his Confederacy. He was never obliged under these Circumstances, nothing of this case was included in the League, and therefore tacitly excepted; the then State and condition of his Affairs, which was the moving and leading cause to his consenting to it, is now quite different and become another thing, and the former motivs to a War are now changed into more powerful arguments for a Peace.

Tis the same in all pacts and promises betwixt private persons; they are all subject to the

The tacit condition of *Things abiding in the same state*, Not as if humane Affairs could long abide without change, but tis meant only of *things* relating to the Pact or Promise, such as contributed to the Being of it, and without which implied it had not been made.

Omnia esse debent eadem que fuerunt cum promitterem, ut promittentis fidem teneas. Quicquid mutatur libertatem facit de integro consulendi & meam fidem liberat. Sen. de Benef. lib. 4. cap. 35.

For Example, I promise my friend I will relieve him as long as I live and never suffer him to want. But I was then in the possession of a plentiful fortune, am now reduced to penury, so that what I have, barely suffices my own necessities. Here my promise binds me not, Nature teaching and Charity permitting to prefer my self. Perhaps my friend becomes a Criminal to the State, and by Law, though a subsequent one, I am forbid to relieve him. Here my Duty to the Government forecludes my promise. Or if an Usurper forbids me under Capital Penalties, though I owe him no duty of Obedience, yet self-preservation acquits me. Nor can it be supposed that I meant to oblige my self to supply anothers wants, with the loss or imminent hazard of my own life. Perhaps I promised to a friend, and he afterwards turns

turns my enemy, and what I intended for his good he perverts to my hurt, here I may justly retract my abused benefit. Infinite Cases may be framed, wherein the change of things shall change the Reason, and consequently the Obligation of a Promise. And though when I promised, I did not caution expressly against such Accidents and Events, under which I would be understood not to be bound, because I could not know nor foresee them all; yet common and universal Reason shall be pleaded in aid of the weakness of my private understanding. For bare words ought not to be extended to over-rule the reason of things, but on the contrary, the reason of things ought to regulate the interpretation of words. And all Stipulations and contracts consist as well of what is rationally implied as what is verbally expressed.

But if Common Reason and equity be justly pleaded in benefit of a private Person where his Life and Fortune lye at Stake, how much more shall it be in the Case of a Prince, where the Conservation of a Community is concern'd. And if unforeseen Accidents fall

C

out

out in the ordinary Occurrences of humane Life, how much oftner in the Case of a War, that Grand Scene of Vicissitudes and mutability.

The case of the *Gibeonites* recorded in Sacred History, who by Surreption and not without a fraudulent Lye, obtained a League, wherein they yeilded their Persons Slaves and Bondmen to Redeem their Lives, will, if duly examined make nothing towards the invalidating of what's before affirmed, as may to his saitsfaction be seen by him who has the leisure to consult *Grotius* in his 2d, Book *de Jure Belli ac Pacis* Cap. 13. Paragr. 4.

England is
Confederate
with France,
in a War a-
gainst Holland,
and France at
the same time
makes War a-
gainst Spain,
who is an Al-
lie of England.

In Case two Princes be Confederates in a War against a third, and one of them by Hostile Provocations Occasionally arising from this War, or by Voluntary design Engages himself in a new War against a fourth Prince, who is a Friend and Allie of the other Confederate, to the Multiplication still of more Wars by a Superfatation. In this Case the state of Affairs is quite altered from what it was when the League was first entred into, and that other Confederate will labour under

der a double disadvantage, For first, the Forces of his Confederate will by this new War be distracted and divided, and consequently more of the burden and danger of the War devolv'd upon him. 2dly. The assistance which he gives his Confederate, and which is intended for maintenance of the War against a Common Enemy, will either wholly or in part be diverted to a War against his own Allie; and by this means shall with one hand Fight against his Enemy, and with the other against his Friend. And in Case the Conservation of the Amity of that Allie be of great use to him and his People, and his true Interest complicated therewith, he shall now become Engaged in an unnatural War against himself.

But put the Case still Stronger. Suppose it was caution'd in the Treaty of the League, that if the War which the two Confederates were to make against a third Prince or State should occasion a new War against one of those Confederats from a fourth Prince, that in such Case both the said Confederates should still assist each other in the Prosecution of the War, and moreover declare

D. 2

that

that fourth Prince or State their Common Enemy. Here an unforeseen Accident or unexpected change cannot be pleaded, because this new War is not onely supposed but provided against by exprefs Covenant.

To this I answer two ways. First if one of the Confederates has already a League and Alliance with that fourth Prince, against whom this new War is to be undertaken, and no violation of the League on the part of that Prince, that Proviso how exprefs forever is absolutely Void. For no Prince is obliged in compliance with his Word to a new Confederate to break his Faith with an old One, and where Contracts prove repugnant one to another, the first stands good, the second is a nullity.

If it be said there has been a violation of the League on the part of that Prince by his giving Assistance to an Enemy. As in the Case now before us, *Spain* assists *Holland* with whom *England* is at War. To this will be answered *Spain* assists not *Holland* against *England*, but against *France*. And never did any League or Treaty forbid a Prince, or can forbid.

forbid him to assist his Friend, against his own, and his Friend's Common Enemy, for this were utterly to subvert the fundamental Principels and Maxims of all Political Prudence and Reason.

But Secondly, though this Accident of a new War arising with another Prince was supposed, yet many others as weighty as that may fall out wholly unforeseen, for tis not possible for humane understanding to Enumerate all future Contingencies. Peradventure the disposition of a Prince's Affairs at home, the temper of his People, some important Considerations of a private nature and not fit to be Published, may render a peace Absolutely Necessary, of which the Prince is the sole Judg. And if upon serious and mature thoughts he finds his Inducements Real not Feigned, Weighty not Frivolous, not Levity or Inconstancy in the Case; but Necessity, and such a one as he suffers under, not sought for by him to palliate a fraud. If upon such Circumstances he Treats a Peace exclusive of his Confederate, who upon notice given him, refuses to be Included, especially if just and honorable Conditions be offered,

offered him from his Enemy, the adequate End of all just Arms, and which when rejected may make a War Originally just become unjust, I say in so doing the Faith and Honour of the Prince remain unblemish'd. Nor is it any more Imputation to him then to the Master of a Ship Bound upon a Voiage, though it requires hast, not to put out to Sea when the Wind is contrary, or to put back to Port when the Storm arises.

For no supposed Covenants, Stipulations or Conditions may be admitted to interpose betwixt the safety and welfare of a Prince or People, all such are directly contrary to the Intention of the Contractors and the End of the Contract; And are nothing but Words depraved and distorted from their genuine meaning by the Artifice of them, who would either preserve or aggrandise themselves by anothers Ruine.

And as no humane understanding can Enumerate all future Accidents, so no finite being can engage its self against all future Events, This is a task onely for Omniscience and Omnipotence for an infinitely extended
VVisdom,

Wisdom, which overtakes Futurities, and for a Power Commensurate to that Wisdom.

The Honour of a Prince, which is his moral Conscience, is too Nice and Delicate a thing for the ungentle touch of a private hand. And tis difficult to give a particular solution to all the *Phænomena* without an exact knowledg of the Original Treaties, with their Relatives, Dependencies and Circumstances, wherein the Honour of the Prince is supposed to be concern'd. But this may be confidently affirm'd, if one Prince shall measure the obligation of his Leagues and Treaties with forrain Nations by the Standard of his own Interest, and no longer abide by them then they abide that test; And in so doing justify himself by the Common Practice and Usage of the most Civilised Nations in all ages, whilst the other is tied up to all the niceties & punctilios of Words heightned by an Interessed Casuist, this scrupulous Prince will be subjected to mighty disadvantages, and be fast bound when the other is loose. Now that the Practice and usage of Nations has been such is a plentiful Topic in History, and a large Feild to expatiate in. It may suffice.

fice in this place slightly to touch some few Instances.

See Thuan. &
Cambd. Ann.

Henry the Fourth of *France* made a League offensive and defensive with Queen *Elizabeth* of *England* and the States Gen. of the United Provinces, with Express Covenants that no one should make Peace with *Spain* without Consent of both the others.

The Treaty was solemnly ratified at *Paris* with many Vows and Protestations made by the King in the presence of the Earl of *Shrewsbury* the *English* Ambassador, and repeated in sundry Letters under his own hand to the Queen; to whom he also owed a great debt of gratitude for many signal kindnesses, and seasonable supplies of Men and Moneys. Yet afterwards finding his People tired and exhausted with continual Wars which had lasted Forty Years, and having good Conditions offered him from *Philip* of *Spain*, he signifies to the Queen and States his disposition to a Peace. And though secretary *Cecil* from hence, and *Barnevelt* from the States, were sent expressly to him to confirm him in the League, who spared not to press home upon

upon him the Faith thereof, and that not without some sharp expostulations. Yet that King excused himself by the importunity of his Affairs, protesting, that his refusal of a Peace with *Spain* would involve him in Com-motions at home. That the Law of Nature prefer'd self preservation. That the Kingly office would his Peoples good should be the su-preme Law. That Christian Duty required the sparing of Christian Bloud. And so conclu-ded a seperate Treaty at *Vervins* and left the Queen and the *States* to prosecute their War against *Spain*.

In the Year 1635, began the open rup-ture of the Peace made at *Vervins*; and War was solemnly proclaimed betwixt the two Crowns of *France* and *Spain*. From which time sundry Treaties were made betwixt *France* and the *States General* for carrying on a Common War against *Spain* their Com-mon Enemy, with defences of the one to make a separate Treaty without comprehen-sion of the other. Yet the *States Gen* awa-kened at length to discern, that the Lower the *Spanish* Scale was depressed, the higher that of *France* would be lifted; And that

whiles they enlarged their Border upon the *Spanish* Netherlands, They fought themselves the nearer to *France*. And that as it was necessary for them on the one side to maintain Banks for securing their low Countries against Inundations of the Sea. so it was as needful for them on the other side to preserve a *Spanish* Barriere in *Flanders*, interposed betwixt them and the Impetuous overflowing torrent of a *French* Power. They at last embraced the Honorable and Advantageous Conditions tendred them, and Concluded a Peace with *Spain*. Which though *France* resented, and *Monsieur Servient* the *French* Plenipotentiary at *Munster* could tel them, That though he had but one eye, he could see that one day they would Repent it. Yet the *States* thought themselves out of Pupillage, and Capable to Judge their own Concerns in the last resort. Nor did they think it reasonable that *France* should be the sole Arbitrator of Peace and War, not onely for themselves, but for their Allies also. They did not exclude *France* from the Peace, but *France* would not be Included. And they conceived the *French* King had no more reason to formalise against them, for

Con-

Concluding a separate Peace, then the *States* had to be offended with Him, for carrying on a separate War, which continued near twelve Years longer, down to the Treaty at the Pirenees in the Year 1659, Both had equal Right of Judging and of Chusing what they Judged their proper Interest And *Qui jure suo utitur nemini facit Injuriam.*

Frederic the third of *Denmark* being confederated with the *Pole* and *Brandenburger* against *Sueden* under Strict defenses of entering into a separate Treaty without the inclusion of the other Allies, yet the *Suedish* King having made that Miraculous March over the Frozen Seas into *Zeland*, the *Dane* impelled by the Necessity of his affairs, Concluded that memorable Treaty at *Roschild*, which under the Mediation of *England* and *France*, saved *Denmark*. And his Father *Christiern* the fourth, had done the like in the Year 1629, when worsted by the *Imperialists*, after he had Confederated with the Princes of *Saxony* *Pomeran* and *Mecklenburgh*. In both, which Cases there was a force put, and a Moral Necessity, which resolved into this, *Quicquid Cogit excusat.*

But what shall we say to the aforementioned Treaty at the Pirenees, where *France* Covenanted by Article to abandon *Portugal* and send them no more succours of Moneys, Men, Munition, &c. contrary to former Conventions with that Crown, and that upon no Cogency of their Affairs, for they were then in a Flourishing Condition, but in exchange for several advantageous Concessions from *Spain*, of which when *France* was in Possession, that Article was soon superseded.

But this is nothing to my purpose. Neither am I Willing to enlarge further, because I did not design a full Tract but only a Brief and Modest Enquiry.

E N D